

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 August 2003

BALCA Case No.: 2003-INA-173
ETA Case No.: P2001-NY-02476765

In the Matter of:

AMY & PHILIPPE HEILBERG

Employer,

on behalf of

ROSANNA TABLADA

Alien.

ORDER OF DISMISSAL

On October 22, 2002, the Certifying Officer ("CO") issued a Final Determination denying certification in the above-captioned case. (AF 91-93). In pertinent part, the Final Determination advised Employer, as per 20 C.F.R. §§ 656.26(b)(1), that:

A request for review of a denial may only be made by the employer . . . and submitted by certified mail to the certifying officer who denied certification within 35 days of the date of this denial. If a request for review is not made within the specified time, the denial shall become the final determination of the Secretary. Failure to file a request for review in a timely manner shall constitute a failure to exhaust available administrative remedies.

(AF 91). The CO file stamped as received Employer's request for review on December 30, 2002 -- 69 days after the Final Determination was issued. (AF 97). The Federal Express shipping label shows that Employer shipped the package on December 27, 2002. (AF 94).

A request for review must be "mailed by certified mail to the Certifying Officer who denied the application within 35 calendar days of the date of the determination, that is, by the date specified on the Final Determination form." 20 C.F.R. § 656.26(b)(1). Calculation of the 35 day rebuttal period starts the day following the issuance of the Final Determination and terminates on the thirty-fifth calendar date following the beginning date. 29 C.F.R. § 18.4(a). In this case, the 35 days began October 23, 2002. Because Employer's request was not received until December 30, 2002, it is untimely. Employer has not made any attempt to justify or explain its untimely filing in compliance with the 35 day deadline. *Flyers*, 1996-INA-383 (March 5, 1998); *Delmar Family Dental*, 1988-INA-132 (Sept. 26, 1988) (*en banc*). Accordingly, CO's denial of alien labor certification is hereby **AFFIRMED** and this case is **DISMISSED**.

SO ORDERED.

Entered at the direction of the Board by:

A

Todd R. Smyth
Secretary to the Board of
Alien Labor Certification Appeals